Chs118-07

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 118 OF 2007
IN
SUIT NO. 1088 OF 1973

RUNGTA ESTATE PRIVATE LIMITED AND ORS. .. Plaintiffs
V/S
PRADEEP GORDHANDAS VO RA AND ORS. ... Defendants

Mr. Milind Vasudeo with Mr. F. Dubhash i/b.
Munir Merchant for plaintiff.
Mr. J.P. Sen i/b. FZB AND ASSOCIATES
for defendant nos. 1A to 1C / applicants.

CORAM: **D.G. KARNIK J.**

DATE: February, 26, 2007

P.C.:

1. Heard learned counsel for the appearing parties.
2. The applicants have taken out this Chamber Summons for condonation of delay of about 113 days in filing of the additional written statement (after amendment of the plaint). The delay is computed on the basis that the additional written statement is also required to be filed within 90 days. Relying upon the decision of the Supreme Court in Iridium India Telecom Ltd. Vs. Motorola Inc., reported in AIR 2005 SC 514 learned counsel for the applicant submitted that in fact the

statutory period of limitation of 90 days for filing of the written statement / additional written statement is not applicable. Counsel further submitted that as there is no order passed directing the defendant to file the additional written statement within a specific time, in fact there is no delay. However, by way of abundant caution the present Chamber Summons has been taken out.

3. Learned counsel for plaintiffs opposed the Chamber Summons and submitted that the plaintiffs were required to pay heavy costs while amending the plaint and therefore the defendant should also be directed to pay heavy costs for delay in filing the additional written statement.

4. In my view the rule requiring the defendant to file written statement within 90 days is not be applicable to the suits on the original side of the High Court. However, the fact remains that the defendants have not filed their additional written statement for a period of more than 6 months after the amendment of the plaint. Mere delay however, cannot be a ground for refusing to take on record the additional written statement, which can be taken on record subject to payment of costs. For these reasons the Chamber Summons is allowed in terms of prayer clauses (a), (b) and (c) , subject to payment of costs of Rs.2000/- . The applicant shall file the additional written statement within two weeks.

(D.G. KARNIK J.)